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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/464,377	12/15/1999	MICHAEL R. STALLCUP	13761-726	7454

7590 02/05/2003

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EXAMINER

PROUTY, REBECCA E

ART UNIT	PAPER NUMBER
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1652

DATE MAILED: 02/05/2003

23

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory ActionApplication No.
09/464,377Applicant(s)
Stallcup et al.Examiner
Rebecca ProutyArt Unit
1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Jan 9, 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on Dec 19, 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: Limitation to 85% identity to SEQ ID NO:1 in Claim 1 does not appear to have support in the specification as filed and new claims 49 and 50 are duplicates of claims 46 and 47 as amended.

3. ☐ Applicant's reply has overcome the following rejection(s):

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:
see attached

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none

Claim(s) objected to: none

Claim(s) rejected: 1-3 and 39-47

Claim(s) withdrawn from consideration: 4-38

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

10. ☐ Other:

REBECCA PROUTY
PRIMARY EXAMINER
ART UNIT 1652

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Applicants amendments to the claims which have not been entered as they raise new issues and introduce new matter to the claims would appear to overcome the rejections of the claims under 35 U.S.C. 112, first paragraph. However, in view of the non-entry of the amendments the rejections are maintained for the reasons of record.

The amendments to the claims would not overcome the rejection of claims 1-3, 42-47, 49-50 and 51-52 under 35 U.S.C. 102(a) as the provisional application (60/112,523) does not provide written description of the genus of nucleic acids recited in Claims 1-3, 42-47, 49-50 and 51-52 as amended. As such these claims could not be granted the benefit of the filing date of the provisional application. Claims 39-41 and 48 as amended would appear to be allowable if they were rewritten as independent claims as the provisional application does provide support for the inventions of these claims. However, in view of the non-entry of the amendments the previous rejection stands for the reasons of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rebecca Prouty, Ph.D. whose telephone number is (703) 308-4000. The examiner can normally be reached on Monday-Friday from 8:30 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapu Achutamurthy,

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can be reached at (703) 308-3804. The fax phone number for this Group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

A handwritten signature in black ink, appearing to read "Rebecca Prouty". The signature is fluid and cursive, with the first name being more prominent.

Rebecca Prouty
Primary Examiner
Art Unit 1652